

"his sentiments" and opinions, and to discuss the character, fitness, qualifications, habits, opinions, defects, merits or lack of them, of any candidate for office in such form and manner as to himself appear, subject, in law, only to responsibility for the abuse of that right. For such discussions the law sets up no standard of morality, taste, humanity or decency, but leaves those matters wholly to the censorship of the moral sense of the people, except that when such writings are libellous in their character, and are not privileged, the publisher must be, on a criminal prosecution, to show to a jury not only that they are true, but that they were published with good motives and for justifiable ends. But these provisions will be searched in vain to find any right to publish as genuine any false or forged letter or instrument purporting to be the act of another, although he be a candidate for office. In such a case, neither the forger nor the publisher of the forgery's writing or publishing "his sentiments" or opinions within the protection of the Constitution, or discussing any question within the range of his lawful rights and privileges. He is, both lawfully and in fact, putting forth to the community as true, the writing and acts of another and if the publication be injurious within the law of libel it is bound in such case to know its truth, or to take the consequences of its falsity. In respect of the forger, and of the publisher with knowledge of the forgery, there is simply a *caveat emptor* in the law of felony, which the consciousness of all decent people must recognize, and legislation should have been to supply. Unhappily in the present condition of the law, even such an act cannot be reached except as a criminal libel; but I think it cannot be doubted that the contents of such a forged letter, as such as to expose the alleged writer to censure or injury, or public hatred, contempt or ridicule, or such as might reasonably provoke him to a breach of peace, will be clearly felonious; and the venia of the libel is only the more populous because the forger has put it into the mouth of the party intended to be injured. If there were no precedent, the common law is elastic enough to cover and redress such a public wrong.

NATURE OF THE CHARGES.

The accused is charged in this case with two offences, substantially as follows:

First—That he wrote the so-called Morey letter, therein counterfeiting the handwriting and signature of James A. Garfield, and caused it to be published as his genuine letter in a newspaper known as *Truth*.

Second—That said letter being in fact a forgery, but published as genuine, was publicly denied and disclaimed as a forgery by General Garfield, and that after such denunciation and denial were made, the accused wrote an article entitled "Lynn and Stickney to It," which he published in said newspaper, and in which he reasserted the genuineness of the letter and claimed exemption from the law.

If the Morey letter be in fact a forgery, but published as genuine, it was publicly denied and disclaimed as a forgery by General Garfield, and that after such denunciation and denial were made, the accused wrote an article entitled "Lynn and Stickney to It," which he published in said newspaper, and in which he reasserted the genuineness of the letter and claimed exemption from the law.

In my view of the guilt or innocence of the accused it is of little moment whether the forged letter is of vital importance. Because, first, if the accused really wrote the forged letter and caused it to be published as genuine, then his acts constitute a libel, and it is to be inferred that he did not write the letter and cause it to be printed, yet as he wrote and furnished to the author of the article entitled "Lynn and Stickney to It," which he published in said newspaper, he represents General Garfield to be a forger, and is addressed to transient persons who have no power to restrain him. Second, if the forged letter be in fact a forgery, but published as genuine, then his acts constitute a libel, and it is to be inferred that he did not write the letter and cause it to be printed, yet as he wrote and furnished to the author of the article entitled "Lynn and Stickney to It," which he published in said newspaper, he represents General Garfield to be a forger, and is addressed to transient persons who have no power to restrain him.

CONCLUSIONS WHICH NECESSARILY FOLLOW.

Collating all these facts, which are in no material point contradicted or impeached, we are brought to discern with almost the algebraic certainty of that evidence can alibi, that the envelope in which the forged letter is said to have been received was never mailed, stamped, sent and received through the post office, but rather that it was mailed at Washington on some day later than the 15th of February, 1880.

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On the questions of good motives and malignant ends, either in the commission of the offense or in the publication of the forged letter, the evidence at the trial of the accused is as follows:

It follows from these suggestions that the question of the malice or intent of the accused in the base of his public estimation in this case, and must be fully considered.

THE INDEPIUTABLE FACIN IN THE CASE.

The question may best properly be considered in the light of all the evidence indisputable facts, wholly independent of all opinion in respect of the handwriting.

The theory of the genuineness of the letter is that it was written by General Garfield, at Washington, on the 23d day of January, 1880, to one H. L. Morey, and on about that day mailed at Washington, addressed to Morey at Lynn, Mass., where it was received by Morey. It was shown that the letter with its envelope came into the hands of Mr. Hart, at the office of the newspaper called *Truth*, on or about the evening of the 18th of February, 1880, accompanied by a letter purporting to be written to Mr. W. W. Atwood, of Lynn, Mass.

Mr. Hart, who is the editor of the *Truth*, is the man for whom the forged letter was written.

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